REMARKS

Claims 1-42 are pending in the application. Claims 1-42 stand rejected. By this amendment, Applicants cancel claims 1-42 and submit new claims 43-82. No new matter is added by this amendment. Support for this amendment can be found throughout the specification, and, for example, at pages 4-5 and 51-53.

By this amendment, Applicants do not acquiesce to the propriety of any of Examiner's rejections. This amendment, therefore, does not disclaim any subject matter to which the Applicants are entitled and is not intended to in any way narrow the subject the matter for which a patent is sought. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 USPQ2d 1865 (U.S. 1997).

Applicants also respectfully note that Examiner's position with respect to the declaration and affidavits filed by Applicants on 29 November 2004 under 37 C.F.R. 1.131 is inconsistent. On page 2 of the Office Action, Examiner states that "[t]he declaration and affidavits filed on 11/29/2004 under 37 CFR 1.131 is sufficient to overcome the Wood et al., U.S. Pat. No. 6,691,232 reference." However, that sentence is followed immediately by one stating that "[t]he declaration and affidavits filed on 11/29/2004 under 37 CFR 1.131 has been considered but is ineffective to overcome the Wood et al., U.S. Pat. No. 6,691,232 reference." Further, the rejections in the Office Action all rely upon the Wood et al., U.S. Pat. No. 6,691,232 reference. In the furtherance of prosecution, Applicants will assume that the first sentence quoted above was included by error, though Applicants would appreciate clarification of this point by Examiner.

I. REJECTIONS UNDER 35 U.S.C. § 102

A. Rejection of claims 1-42 under 35 U.S.C. § 102(e) as being anticipated by Wood et al. (U.S. Patent No. 6,691,232)

The Examiner rejected Applicants' claims 1-42 under 35 U.S.C. § 102(e) as being anticipated by Wood et al. (U.S. Patent No. 6,691,232) ("Wood"). Office Action at pages 3-5. Applicants respectfully traverse.

In order to aid prosecution and allowance, Applicants hereby cancel claims 1-42 without prejudice and submit new claims 43-82. By this cancellation, Applicants do not acquiesce to the propriety of the Examiner's rejection.

In order to support an anticipation rejection under 35 U.S.C. § 102, the Examiner must show that each and every element of the claimed invention is shown identically in a single reference. *In re Bond*, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990) citing *Diversitech Corp. v. Century Steps, Inc.*, 7 U.S.P.Q.2d 1315, 1317 (Fed. Cir. 1988). Further, the elements of the prior art must be arranged as in the claims under review. *Id.*, citing *Lindemann Maschinenfabrik v. American Hoist & Derrick Co.*, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). Thus, the reference the Examiner asserts as prior art must contain all of the elements contemplated by the present invention in the same order and arrangement as presently claimed. Wood does not teach each and every element of new claims 43-82.

In rejecting claims 1-42, Examiner states that Wood teaches the obtaining and evaluating of "circumstantial/environmental/token/parameter data associated with an authentication attempt/request." Wood, however, does not teach the storing of circumstantial data as defined in new claims 43–82. Instead, Wood relates to the evaluation of "environmental information" to "form a risk profile that can be factored into credential type sufficiency." Wood at col. 2, lines 57-58; col. 6, lines 29-34. Thus, for instance, under an authentication attempt may be denied due to a "time of access, originating location (physical or network) and/or connection type" that is determined to be suspect based upon some predetermined set of "allowed environmental states." Wood at col. 2, lines 56-57; col. 11, line 22. Thus, Wood does not teach or suggest the storing of circumstantial data as defined in new claims 43–82.

Wood also does not teach the comparison of stored circumstantial data from a first authentication attempt with circumstantial data from a second authentication attempt, as defined in new claims 43-82. Instead, Wood relates to the comparison of the "environmental information" for any given authentication attempt to some predetermined set of "allowed environmental states" to determine if that authentication attempt should be successful. Wood at col. 11, line 22. In fact, the bulk the Wood patent relates to a heading therein entitled "Single Sign-On Security Architecture." Wood at col. 5, line 13. With only a single sign-on, there cannot possibly be a comparison of circumstantial data from two distinct authentication attempts.

Indeed, in an Office Action issued July 28, 2004, Examiner admitted that Wood fails to show "comparison of the circumstantial data with previously stored data." Office Action of July 28, 2004 at page 9. Thus, it is abundantly clear that Wood does not teach or suggest the comparison of stored circumstantial data from a first authentication attempt with circumstantial data from a second authentication attempt, as defined in new claims 43–82.

Applicants respectfully submit that Wood does not teach or suggest each and every element of new claims 43-82 and respectfully request reconsideration and withdrawal of the present rejection.

II. REJECTIONS UNDER 35 U.S.C. § 103

A. Rejection of claims 20-24 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 6,691,232) in view of official notice taken by Examiner

The Examiner alternatively rejected Applicant's claims 20-24 under 35 U.S.C. § 103(a) as being unpatentable over Wood et al. (U.S. Patent No. 6,691,232) in view of official notice taken by the Examiner. Office Action at 5-7. Applicants respectfully traverse.

In order to aid prosecution and allowance, Applicant hereby cancel claims 1-42 without prejudice and submit new claims 43-82. By this amendment, Applicant does not acquiesce to the propriety of the Examiner's rejection.

The Examiner took "official notice of both the motive and modification necessary for a person of ordinary skill in the art to arrive at a value representing the confidence as a value/number/percentage of the trust level." Office Action at page 6. In fact, the United States Court of Customs and Patent Appeals definitively "rejecte[d] the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice." *In re Eynde,* 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973). Also, as noted by the court in *In re Ahlert,* 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" (citing *In re Knapp Monarch Co.*, 296 F.2d 230, 132 USPQ 6 (CCPA 1961)). For example,

assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d. at 1091, 165 USPQ at 420-21. *See also In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979). As such, the official notice taken by the Examiner is wholly inappropriate and objected to by the Applicants. Indeed, the Examiner must withdraw the present rejection or, if it is maintained the Examiner must provide a personal affidavit or apply references in support thereof. MPEP 2144.03.

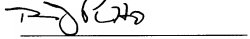
As Applicants have demonstrated above, Wood does not render new claims 43-82 obvious, as it does not teach or suggest the storing of circumstantial data or the comparison of stored circumstantial data from a first authentication attempt with circumstantial data from a second authentication attempt. Examiner's official notice does nothing to remedy these shortcomings of Wood, and Applicants submit that this application is now in condition for allowance.

CONCLUSION

Applicants have properly stated and traversed each of the Examiner's grounds for rejection. Applicants submit that the present application is now in condition for allowance.

If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited. If there are any additional fees due in connection with the filing of this reply, please charge the fees to undersigned's Deposit Account No. 50-1067. If any extensions or fees are not accounted for, such extension is requested and the associated fee should be charged to our deposit account.

Respectfully submitted,



17 October 2006

Don J. Pelto
Reg. No. 33,754

Preston Gates Ellis & Rouvelas Meeds LLP
1735 New York Avenue, NW, Suite 500
Washington, DC 20006
Telephone: (202) 661-3710
Facsimile: (202) 331-1024